

AGREEMENT FOR ENGINEERING SERVICES

FOR

WHITESTOWN PARKWAY RESURFACING

TOWN OF WHITESTOWN, BOONE COUNTY, INDIANA

This AGREEMENT, made this _____ day of _____, 2017, by and between TOWN OF WHITESTOWN, 6210 VETERANS DRIVE, WHITESTOWN, INDIANA 46075 hereinafter referred to as OWNER, and MIDWESTERN ENGINEERS, INC., 6809 CORPORATE DRIVE, INDIANAPOLIS, INDIANA 46278, hereinafter referred to as ENGINEER.

WITNESSETH:

WHEREAS, OWNER desires ENGINEER to perform necessary engineering functions in accordance with the needs to develop and prepare construction plans and documents for completing the Whitestown Parkway Resurfacing Project; and

WHEREAS, ENGINEER has indicated its willingness to perform the various professional engineering services required for the analysis; and

NOW, THEREFORE, OWNER and ENGINEER, each in consideration of the mutual covenants herein contained, agree as follows:

PART I – ENGINEERING SERVICES

A. DUTIES OF THE ENGINEER

Develop engineering plans necessary to complete the Whitestown Parkway Resurfacing Project. See below for the Scope of Work per discussions with OWNER:

1. Design Services - MEI will complete final construction plans and specifications for the above described project including, re-surfacing approximately 5,600 linear feet of Whitestown Parkway including all pavement/concrete stripping and adding a bike lane between Stonegate Drive and Veterans Drive. In addition, adding sidewalks and curbing around the Whitestown Town Hall.
2. Provide technical criteria, written descriptions and design data for the OWNER'S use in filing applications for the permits with and/or obtaining approvals of such governmental authorities as have jurisdiction to

review or approve the final design of the Project, including Town of Whitestown, Boone County, and State of Indiana.

3. Prior to advertisement for construction bids, the ENGINEER shall provide sufficient copies of the contract and bid documents for the OWNER, appropriate State and local agencies from whom approval of the project must be obtained.

B. DUTIES OF THE OWNER

1. Attend meeting, as necessary to review design progress.
2. Review and approve construction plans in a timely manner.

PART II – BIDDING

A. DUTIES OF THE ENGINEER

1. Prepare bidding documents and distribute documents to prospective bidders.
2. Attend Pre-bid meeting in the Town of Whitestown to review the project with prospective bidders.
3. Attend bid opening, and;
4. Review bids and prepare bid tabulation and ENGINEER'S recommendation for the OWNER for awarding the construction contracts;
5. Assist the Owner in other procurement methods of selecting a Contractor

B. DUTIES OF THE OWNER

1. Place public advertisement to bid the project, meeting State requirements for public bidding and pay all costs for associated with advertisement.
2. Review Bid tabulation and ENGINEER'S recommendations.

PART III – CONSTRUCTION ENGINEERING

A. DUTIES OF THE ENGINEER

1. Assist in issuance of tentative and final construction contract awards and development of construction contracts as requested by the OWNER. Furnish three (3) sets of drawings, specifications and contract documents for the project for execution by the contracting parties.

2. Check and approve any necessary shop and working drawings furnished by the Contractors. Furnish the OWNER a copy of all such drawings as approved.
3. Interpret the intent of the drawings and specifications to protect the OWNER against defects and deficiencies in the construction of the part of the Contractors. The ENGINEER will not, however, guarantee the performance by the Contractor.
4. Provide general engineering inspection of the Work of the Contractor as construction progresses and provide reports of said progress to the OWNER.
5. Cooperate and work closely with the OWNER'S representative.
6. Review and approve construction progress payments and final construction payments.
7. Make a final inspection of all construction and furnish written certification of the final inspection to OWNER and appropriate regulatory agencies.
8. Provide the OWNER with two (2) sets of record Drawings. Said drawings will be based upon information provided by the ENGINEER'S resident project representative.

B. DUTIES OF THE OWNER

1. Issue tentative and final construction contracts award notices and execute construction documents.
2. Process construction progress payments and final construction payments.
3. Cooperate with the ENGINEER and Contractor for necessary to successfully complete the project.

PART IV – RESIDENT PROJECT REPRESENTATIVE

ENGINEER shall provide resident construction representation if requested and authorized by the OWNER.

He will, prior to initiation of construction, submit a resume of the resident representative's qualifications. The Resident Project Representatives role in the project shall be to observe, document and report the Contractor's progress on the project.

The ENGINEER'S undertaking hereunder shall not relieve the Contractor of the Contractor's obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the Contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.

PART V - COMPENSATION AND PAYMENT SCHEDULE FOR ENGINEERING SERVICES

- A. Compensation for Part I shall be a lump sum fee totaling Forty-One Thousand and Five Hundred Dollars **(\$41,500.00)**. Said compensation shall be considered earned and payable based on a percent complete invoiced by the ENGINEER on a monthly basis.
- B. Compensation for PART II shall be a lump sum fee totaling Six Thousand and Five Hundred Dollars **(\$6,500.00)**. Said compensation shall be considered earned and payable following the submission of the Bid tabulation and ENGINEER'S recommendation to the OWNER.
- C. Compensation for PART III shall be a lump sum fee totaling Twelve Thousand Dollars **(\$12,000.00)**. Said compensation paid to the ENGINEER will equal a percentage comparable with the complete percentage of construction.
- D. Compensation for PART IV shall be based upon Per Diem rates as needed and requested by the Town in accordance with Attachment A, attached hereto and incorporated herein as a part of this Agreement. The ENGINEER will render to OWNER an itemized bill separate from any other billing at the end of each month for compensation for such services performed hereunder during such month.
- E. The ENGINEER shall furnish the OWNER itemized invoices which clearly display the PART of this AGREEMENT used as a basis for compensation and compensation computations. Separate invoices shall be furnished for each PART of this AGREEMENT.
- F. It is mutually agreed by the OWNER and ENGINEER that payments for engineering services are due and payable within 30 (thirty) days after the date of the first regularly scheduled Owner's meeting following the date of the invoice.

PART VI - OWNERSHIP OF DOCUMENTS

All reports and other work products of the ENGINEER for this project are instruments of service for this project only and shall remain the property of the ENGINEER whether the project is completed or not. Reuse of any of the instruments of service of the ENGINEER by the OWNER on extensions of this project or on any other project without the written permission of the ENGINEER shall be at the OWNER'S risk and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of the ENGINEER'S instruments of service by the OWNER or by others acting through the OWNER.

PART VII - SUCCESSORS AND ASSIGNMENTS

The OWNER and the ENGINEER each binds himself, his partners, successors, executors, administrators, and assigns to the other party to this AGREEMENT, and to the partners, successors, executors, administrators, and assigns of such party in respect to all covenants of the AGREEMENT. Any subcontracting by the ENGINEER shall be in accordance with applicable State and Federal law.

PART VIII - TERMINATION

- A. This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party: Provided, that no such termination may be effected unless the other party is given (1) not less than thirty (30) calendar days (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- B. This AGREEMENT may be terminated in whole or in part in writing by the OWNER for its convenience: Provided, that such termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements) and that the ENGINEER is given (1) not less than thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- C. If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to the extent of any additional costs occasioned to the OWNER by reason of the ENGINEER'S default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.
- D. Upon receipt of a termination action pursuant to paragraphs (A) and (B) above, the ENGINEER shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this AGREEMENT, whether completed or in process. Upon termination pursuant to paragraphs (A) and (B) above, the OWNER may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work taken over by the OWNER for

completion will be completed at the OWNER'S risk, and the OWNER shall hold harmless the ENGINEER from all claims and changes arising out of improper use of the ENGINEER'S work.

- E. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined by a court of law that the ENGINEER had not so failed, the termination shall be deemed to have been effected for the convenience of the OWNER. In such event, adjustment of the price provided for in this AGREEMENT shall be made as provided in paragraph (C) of this clause.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this AGREEMENT in triplicate on the respective dates indicated below.

OWNER: TOWN OF WHITESTOWN

ATTEST: _____

Type Name: _____ Type Name Jason Lawson

Title: _____ Title: Public Works Director

Date: _____ Date: _____

ENGINEER: MIDWESTERN ENGINEERS, INC.

ATTEST: Alan F. Burch BY: Mark M. Sullivan

Name: Alan F. Burch, P.E Name: Mark M. Sullivan, P.E.

Title: Vice President Title: CEO

Date: April 6, 2017 Date: April 6, 2017